IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1353 OF 2004

Sadhu T.Shetty ...Petitioner

Versus

State of Maharashtra & Ors. ...Respondents

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Mr.R.D.Soni with Mr.J.R.Hegde for Petitioner.

Mr.K.V.Saste, A.P.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

MARCH 31, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Saste, A.P.P. waives notice for Respondents.

3. As short question is involved, the matter is taken up for final disposal forthwith, by consent.

4. This Petition takes exception to the order passed by the Respondent Nos.2 and 3 dated 10th May 2004 and 27th October 2001 respectively. Proceedings were initiated by giving show-cause notice to the Petitioner on 8th July 1998 to show cause why license given in favour of the Petitioner under the Rules for Licensing and Controlling Places of Public Amusement (other than Cinemas) and Performances for Public Amusement including Melas, Tamasas, 1960, ought not to be cancelled. It is not necessary to refer to all the grounds on the basis of which, the said proceedings were commenced, except adverting to the ground 4(a) which reads thus :

> "(a) Rul. 227, sub-sec. 1 by not closing the establishment within time limit and keeping the amusement performance continued beyond the time limit, and Rule 227 Sub Sec.2 no person shall commence or stage any performance for public amusement in a premises between 13.30 a.m. to 06.00 a.m."

5. In ground (b), it is mentioned that the

premises were found open on several dates and the list of those 29 offences was appended to the show-cause notice, which pertain to offences spread over from 21st January 1996 till 23rd December 1997. However, in the final order, which has been passed by Respondent No.3, he has made references to offences only in respect of subsequent period spreading from 10th February 1998 till 26th February 2001. In other words, the basis on which action was proposed against the Petitioner was not made known to the Petitioner, but which has found place in the final order passed by the Respondent No.3. That order incidentally has been uphold by the Respondent No.2. This is the limited controversy, for which, I am inclined to allow the Petition because the proceedings are vitiated on account of non-supply of information which has been made basis for the final action taken against the Petitioner.

6. Accordingly, both the orders are set-aside. However, it is made clear that it will be open to the Authority to initiate fresh action against the Petitioner by giving proper notice,

mentioning all the relevant facts which the Authority would take into account for passing the final order. Those proceedings will have to be decided on its own merits in accordance with law.

7. Petition succeeds on the above terms.

8. It is, however, clarified that it will be open to the Authority to consider the Applications already filed by the Petitioner for grant of renewal of licenses, if so advised.

9. It is also clarified that even though the orders impugned before this Court are set-aside, that does not mean that it will be open to the Petitioner to carry on the business without proper licence issued by the Authority because the license which was granted in favour of the Petitioner, has expired in 1996.

A.M.KHANWILKAR, J.